UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of September, two thousand and six.

PRESENT: HON. ROGER J. MINER,
HON. DENNIS JACOBS,
HON. CHESTER J. STRAUB,

Circuit Judges,

- - - - - - - - - - - - - - - - - - - X
UNITED STATES OF AMERICA,

Appellee,

-v.- **No. 05-6909-cr**

DUSHON FOSTER,

Defendant-Appellant.

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APPEARING FOR APPELLANT: ORIN L. SIBONY, Stavis & Kornfield, LLP, New York, NY, for Defendant-Appellant.

APPEARING FOR APPELLEE: ELIZABETH F. MARINGER, Assistant United States Attorney (Michael J. Garcia, United States Attorney for

the Southern District of New York, on the brief, Celeste L. Koeleveld, of counsel) for Appellee.

Appeal from a judgment and order of the United States District Court for the Southern District of New York (Buchwald, J.), entered December 12, 2005.

UPON DUE CONSIDERATION, it is **ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

Foster claims his sentence is unreasonable. We assume familiarity with the facts, the procedural history, and the issues on appeal.

1. Foster challenges the imposition of two upward departures. Because this Court has already upheld the imposition of these departures in this case, see United States v. Foster, 127 Fed. Appx. 537, 540 (2d Cir. 2005), this challenge is foreclosed.

2. When reviewing the substantive reasonableness of a sentence, an appellate court considers "whether the length of the sentence is reasonable in light of the factors outlined in 18 U.S.C. § 3553(a)." United States v. Rattoballi, 452 F.3d 127, 132 (2d Cir. 2006). In light of these factors, Foster's sentence is reasonable.

For the foregoing reasons, the judgment of the district court is affirmed.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
By:

_____
Oliva M. George, Deputy Clerk